

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE, JURISDICTION
CRIMINAL WRIT PETITION NO.2120 OF 2005

Salman Anees Dolare,	)	
Aged 21 years, residing at	)	
8/10, Dolare House, Opp.	)	
Jama Masjid, Dudh Naka,	)	PETITIONER
Kalyan (West).	)	(brother of the
		detenu)

Versus

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|----------------------------------|---|--------------|
| 1. The State of Maharashtra |) | |
| through the Secretary to |) | |
| the Government of Maharashtra, |) | |
| Home Department(Special), |) | |
| Mantralaya, Mumbai-400 032. |) | |
| 2. Shri D.Sivanandan, |) | |
| the Commissioner of Police, |) | |
| Thane. |) | |
| 3. The Superintendent of Prison, |) | |
| the Yervada Central Prison, |) | |
| Pune. |) | RESPONDENTS. |

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Mr.Maqsood Khan, Advocate for the Petitioner.
Mr.D.S.Mhaispurkar, APP, for the State.
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CORAM : D.G.DESHPANDE &
SMT.V.K.TAHILRAMANI, JJ.

DATED : MARCH 17, 2006.

ORAL JUDGMENT (PER TAHILRAMANI, J.)

1. Through this Petition under Article 226 of the Constitution of India, the petitioner who is the brother of the detenu has impugned the order of

..(2)..

detention dated 8th June, 2005 passed by respondent No.2 Shri D.Shivnandan, Commissioner of Police, Thane. By the said order, the detenu came to be detained under Sub-Section (1) of Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981 (hereinafter referred to as the MPDA Act). The detention order alongwith grounds of detention dated 8th June, 2005 and accompanying documents were served on detenu on 10th June, 2005.

2. A perusal of the grounds of detention would show that the impugned detention order is founded on three C.Rs i.e. C.R.No.227 of 2004, C.R.No.326 of 2004 and C.R.No.30 of 2005.

3. We have heard Mr.Maqsood Khan learned Advocate for the petitioner and Mr.Mhaispurkar learned APP for the State. Although, in this Writ Petition many grounds have been pleaded, Mr.Maqsood Khan, learned Advocate for the petitioner, has pressed only one ground i.e. Ground No.5(b). Ground No.5(b) is as under :

"5(b). The petitioner says and submits that the incidents relied upon by the detaining authority in para (4), (a), (b), (c) of the impugned

grounds of detention do not constitute a Public Order problem. They are outside the scope of the MPDA, 1981. The petitioner says and submits that it is incumbent on the part of the detaining authority to satisfy the Hon'ble Court that the activities referred to in the para (4), (a), (b), (c) of the impugned grounds of detention are prejudicial to the maintenance of public order. The petitioner says and submits that there was no need to invoke the extra-ordinary powers of preventive detention when the ordinary law of the land was sufficient to curb the law and order problem in the incidents referred to in the said para (4) of the grounds of detention."

4. Mr.Maqsood Khan contended that the activities of the detenu were not such as to affect the maintenance of public order. We find considerable merit in this submission. As far as first two C.Rs. are concerned, the detenu was not armed with any weapon neither the person, who was accompanying the detenu, was armed with any weapon and in these two cases only abuses and threats were given by the detenu. In our opinion, looking to the facts of both of these incidents they were not such that they could be said to have affected the maintenance of public order. As far as the last incident is concerned the said incident occurred on account of quarrel over octroi receipt. It appears that it was only on account of the quarrel relating to octroi receipt that the incident took place. Only individuals were involved and affected due to the said offence and the public at large had no reason to panic

..(4)..

on account of the said incident. This incident as well as the earlier two incidents were not such as could be said to have affected the maintenance of public order. In this view of the matter, we find considerable force in the submission made by Mr.Maqsood Khan.

4. In the result Rule is made absolute in terms of prayer clause (a).

(D.G.DESHPANDE, J.)

(SMT.V.K.TAHILRAMANI, J.)